

**GROUP OF GOVERNMENTAL EXPERTS OF  
THE STATES PARTIES TO THE CONVENTION  
ON PROHIBITIONS OR RESTRICTIONS ON  
THE USE OF CERTAIN CONVENTIONAL  
WEAPONS WHICH MAY BE DEEMED TO BE  
EXCESSIVELY INJURIOUS OR TO  
HAVE INDISCRIMINATE EFFECTS**

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Working Group on Mines Other Than Anti-Personnel Mines

**IRRESPONSIBLE USE OF  
MINES OTHER THAN ANTI PERSONNEL MINES (MOTAPM)  
BY NON STATE ACTORS**

Prepared by India

1. The security forces of States are governed by rules, regulations and conventions agreed to by the States, but Non State Actors (NSAs) are accountable to no sovereign authority. State controlled forces are expected to be responsible and their use of all kinds of munitions has some degree of predictability, which is useful for detection and clearance of the conflict zone after a conflict. The use of MOTAPM, explosives and other munitions by NSAs conforms to no norms and therefore can cause considerable harm to the life and property of innocent civilians in unpredictable ways over a prolonged period of time.
2. The character of the NSAs, their tools of terror and the profile of their targets have varied from region to region. While some NSAs procure weapons from private illegal arms dealers, several have the advantage of state-sponsorship. In general, large-scale purchases of arms, including MOTAPM are conducted with the connivance of the governments of the countries that sponsor them or of those where such arms originate or are transshipped. Other avenues by which NSAs gain access to such weapons include:
  - Pilferage either by design or otherwise.
  - Theft or clandestine operations by the employees of the state.
  - Taking by force by the NSA, which raises questions about the security arrangements at sites where sensitive equipment is stored.
3. NSAs are also responsible for indiscriminate use of MOTAPM and Improvised Explosive Devices (IEDs) on roads that are extensively used for civilian traffic, targeting vehicles carrying security personnel as well as civilians.
4. In most cases, NSAs do not have fixed places of combat, and no norms governing the use of weapons or munition of any kind. Avoiding pitched fights with the security forces of the State, their fields of operations range from thickly populated urban areas to cultivated fields in the countryside. Apart from their encounters with the security forces, inter group rivalry and clashes are not uncommon. In an environment unregulated by rules, and dominated by

uncertainty and often desperation, the indiscriminate and irresponsible use of MOTAPM by the NSAs lead to the following long term hazards:

- Unrecorded areas that are mined and left unmarked.
  - Casualties to civilians and livestock, besides disruption of normal economic activities.
  - Disruption of humanitarian assistance to affected areas.
  - Practical difficulties in de-mining in the absence of any authentic record.
5. While there are international measures in place to deal with hijacking and hostage-taking, there are no equivalent effective measures to prevent NSA's from gaining access to weapons. It will be recalled that the UN Conference on Small Arms and Light Weapons (SALW) had failed to prohibit supplies of SALW to NSAs.
  6. The Amended Protocol on Prohibitions or Restrictions on the Use of Mines, Booby Traps and Other Devices (Amended Protocol II) is binding only on States and does not (and can not) impose any obligation on NSAs.
  7. Is there a way to work out norms and mechanisms to at least minimize the scale of destruction caused by irresponsible use of MOTAPM and IEDs by NSAs? This is possible if States agree to implement existing commitments and obligations faithfully as well as agree to additional measures specifically aimed at eliminating access of NSAs to such weapons and implement them with sincerity.
  8. It is to be noted that several elements of Amended Protocol II apply to MOTAPM, as "mine" is defined as: "a munition placed under, on, or near the ground or other surface area and designed to be exploded by the presence, proximity or contact of a person or **vehicle**". Also, elements relating to "booby traps and other devices" apply to use of IEDs:
    - Article 3: General restrictions on the use of mines, booby traps and other devices.
    - Article 6: Restrictions on the use of remotely-delivered mines.
    - Article 7: Prohibitions on the use of booby traps and other devices.
    - Article 8: Transfers. **(Of particular significance is 8(b): "undertakes not to transfer any mine to any recipient other than a State or a State agency authorized to receive such transfers").**
    - Articles 9 to 14.
  9. Possible additional measures could include:
    - Encourage States to adopt national legislation to make it a criminal offence to supply MOTAPM to NSAs.
    - Explore export control measures for MOTAPM that could prevent diversion of supplies.
    - Institute a marking system that facilitates tracking the source of MOTAPM.
    - Compile and release an annual list both of terrorist groups and state-sponsors of terrorism with a view to enforce greater accountability of States.

- Undertake case studies on sources of supplies and trafficking patterns to evolve measures for disrupting MOTAPM transfer to NSAs.
  - Simplify legal procedures to achieve greater cooperation on issues like extradition of criminals and terrorists where required, as also to share information.
  - Collect and disseminate information on MOTAPM left as a result of operations of NSAs so as to initiate suitable measures to educate potential victims and carry out de-mining/ clearance operations.
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